

April 29, 1975

1 - Mr. Mintz

1 - Mr. Gobhardt

Attention: Mr. Barger

ST 104

REC-63

139-4692-10

Mr. Adam Clymer
The Sun
Washington Bureau
1211 National Press Building
14th and F Streets, N. W.
Washington, D. C. 20004

Dear Mr. Clymer:

Reference is made to a letter from Mr. Henry F. Ruth, Jr., Special Prosecutor, Watergate Special Prosecution Force, to you dated March 24th. A copy of this March 24th letter, which enclosed your letter of March 3rd to Mr. [redacted], Office of the Watergate Special Prosecutor, has been referred to this Bureau for a response and was received on March 26th.

MAILED APR 3 1975

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You have requested "...files relating to the investigation of the wiretapping of John Scars...". Should we have any investigative records along the lines of your request, access to such records would be denied under provisions of the Freedom of Information Act, Title 5, United States Code, Section 552 (b) (3) and (b) (7) (C). These exemptions pertain to information prohibited from disclosure by statute and disclosures which would constitute an unwarranted invasion of privacy. You should not infer from the foregoing, however, that we do or do not have the information you requested.

You may appeal my decision in this matter within 30 days by writing to the Attorney General, Attention: Freedom of Information Appeals Unit, Washington, D. C. 20530. The envelope and the letter should be marked "Freedom of Information Appeal." Additionally, judicial review is

1 - The Deputy Attorney General - Enclosures (3)
Attention: [redacted]

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TIN:clh (7)

(SEE NOTE PAGE TWO)

Assoc. Dir. _____
Dep. AD Adm. _____
Dep. AD Inv. _____
Asst. Dir. _____
Admin. _____
Comp. Syst. _____
Ext. Affairs _____
Files & Com. _____
Gen. Inv. _____
Ident. _____
Inspection _____
Intell. _____
Laboratory _____
Plan. & Eval. _____
Spec. Inv. _____
Training _____
Legal Coun. _____
Telephone Rm. _____
Director Sec'y _____

139-4692-10
12/5
MAIL ROOM TELETYPE UNIT

GPO 954-546

Mr. Adam Clymer

thereafter available either in the district in which you reside or have your principal place of business or in the District of Columbia, the location of the records to which you seek access.

Sincerely yours,

C. M. Kelley

Clarence M. Kelley
Director

NOTE: Requester's letter of March 3rd is written on letter-head paper. "The Sun, The A. S. Abell Company, Publisher, Baltimore, Maryland 21203, The Washington Bureau." The response by the Watergate Special Prosecution Force denies the request citing 5 U.S.C. #552 (b) (1), (b) (3), (b) (7) (A), (C), and (D). Also in their response, the Watergate Special Prosecutor declined to confirm whether John Sears was the subject of a Government wiretap. Bufiles 139-4692 is captioned "Unknown Subjects; J. P. Sears - victim, Interception of Communications; Civil Rights: is classified secret, and permanently maintained in the Watergate Special Matters Unit of the General Investigative Division.

Memorandum

TO : Clarence M. Kelley, Director
Federal Bureau of Investigation

FROM : Henry S. Ruth, Jr.
Special Prosecutor

DATE: March 25

SUBJECT: Freedom of Information Act Request Concerning
the Sears Wiretapb6
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Assoc. Dir.	_____
Dep.-A.D. Adm.	_____
Dep.-A.D. Inv.	_____
Asst. Dir.	_____
Admin.	_____
Comp. Syst.	_____
Ext. Affairs	_____
Files & Com.	_____
Gen. Inv.	_____
Ident.	_____
Inspection	_____
Intell.	_____
Laboratory	_____
Plan & Eval.	_____
Spec. Inv.	_____
Training	_____
Legal Coun.	_____
Telephone Rm.	_____
Director Sec'y	_____

John Patrick Ruth

Enclosed herewith is a copy of my letter to Mr. Adam Clymer concerning his request under the Freedom of Information Act for access to this Office's files concerning our investigation of the Sears wiretap. For the various reasons cited in that letter Mr. Clymer has been denied access to any of our files relating to the Sears wiretap investigation. Since a number of documents in our files were received from the Bureau I am hereby referring Mr. Clymer's request to the Bureau to the extent that his request calls for the production of Bureau documents. It is my understanding that standard procedure is for the Bureau to respond directly to Mr. Clymer concerning this portion of his request.

Handle pls

The Bureau documents in our possession include the following:

- (a) All documents produced during the Sears surveillance. A copy of our January 25, 1974 request for these documents is enclosed along with your January 30, 1974 response.
- (b) Report of SA [redacted], 9/18/74
(Bureau File 139-4692)
- (c) All interviews conducted in early May 1973 as part of the Inspection Division's investigation concerning the location of the records of the 17 wiretaps.

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(d) Although not directly related to the Sears surveillance, two other Bureau investigations have collaterally developed information concerning the Sears surveillance. These investigations involve "Gray-Perjury (Bureau file 72-2202)" and "Removal of Wiretap Records - Obstruction of Justice (Bureau file 72-2190)". Both of these investigations are on-going and therefore records relating to them are not discoverable under the Act.

WATERGATE SPECIAL PROSECUTION FORCE
United States Department of Justice
1425 K Street, N.W.
Washington, D.C. 20005

March 24, 1975

Mr. Adam Clymer
The Sun
Washington Bureau
1214 National Press Building
14th and F Streets NW.
Washington, D.C. 20004

Dear Mr. Clymer:

This is in response to your request under the Freedom of Information Act for access to this Office's files regarding our investigations of certain electronic surveillances conducted by the Federal Bureau of Investigation at the request of the White House. These files were compiled by this Office in the course of an investigation of possible criminal violations, and part of that investigation is continuing.

As you are aware, 13 Government officials and four newsmen were the subject of electronic surveillances as part of this wiretap project. On May 10, 1973, District Court Judge W. Matthew Byrne, then presiding at the trial of Daniel Ellsberg, made public the fact that Dr. Morton Halperin had been the subject of one of these 17 wiretaps. At no time has the Government made any official public acknowledgement of the identities of the other 16 individuals who were wiretapped. Acknowledgement that a given individual has been the subject of electronic surveillance by the Government would be an unwarranted invasion of that individual's personal privacy. Accordingly, under the provisions of 5 U.S.C. §552 (b) (7) (C), this Office must decline to confirm whether or not a given individual was the subject of a Government wiretap.

We have reviewed our files on this investigation on a document by document basis, and determined that each of the documents is exempt from disclosure under one or more provisions of the Freedom of Information Act.

bcc: DAG

FBI

file

Ruth (2)

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First, most of the documents which relate to our wiretap investigations and which we have received from the FBI, including all investigative reports, bear the classification of SECRET or TOP SECRET. These documents are exempt from disclosure under 5 U.S.C. §552(b)(1).

Second, all transcripts of grand jury proceedings, as well as evidence introduced as exhibits before the grand jury, must be kept confidential pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure, and, accordingly, are exempt from disclosure under the Freedom of Information Act. See 5 U.S.C. §552(b)(3). Similarly, all information derived from electronic surveillance may not be disclosed. See 18 U.S.C. §2511.

Third, we are declining to disclose internal memoranda of this Office relating to the wiretap investigations. They are exempt from disclosure under 5 U.S.C. §552(5). To the extent that these memoranda contain purely factual information which may be reasonably segregated from policy discussions or advisory opinions, this factual information is also exempt from disclosure under one or more provisions of the Act which are cited in this letter. In brief, the information is based upon or summarizes grand jury matters; moreover, its disclosure in many cases would be an unwarranted invasion of personal privacy or would violate assurances of confidentiality.

Fourth, disclosure of our files relating to our wiretap investigations would constitute an unwarranted invasion of the personal privacy of any individual who has been subject to such surveillance. In addition, such disclosure would constitute an unwarranted invasion of the personal privacy of those individuals who were the subjects of our investigation but against whom no charges have been or will be brought. See 5 U.S.C. §552(b)(7)(C).

Fifth, all interviews conducted by this Office are conducted on a confidential basis, and any notes or memoranda of such interviews are thus exempt from disclosure. The FBI, at the request of this Office, has also conducted a number of interviews. These interviews are also conducted on a confidential basis and are likewise exempt from disclosure. See 5 U.S.C. §552(b)(7)(D).

Finally, although our investigation into certain alleged surveillances is now complete, our overall investigation of the wiretap project itself, as well as other matters relating directly to the project is continuing. Disclosure of information you request thus would interfere with pending investigations. Accordingly, these investigatory files are exempt generally from disclosure. See 5 U.S.C. §552(b) (7) (A).

This Office's files relating to our wiretap investigations also contain copies of a number of FBI documents received by this Office from the FBI. Although I believe these documents are subject to one or more of the exemptions cited above, the documents are primarily the concern of the FBI. Accordingly, I have referred your request to the FBI, which will respond directly to you regarding any FBI documents covered by your request.

I am required by the Act to inform you that under 5 U.S.C. §552(a)(4)(B), you have a right to bring an action in the Federal district court in the District of Columbia or where you reside to challenge our bases for nondisclosure and to seek an order compelling production. (Under regulations promulgated by the Department of Justice, there is no right of appeal to the Attorney General from decisions of the Special Prosecutor denying a request in whole or in part.) I wish to emphasize, however, that I will be happy to entertain any questions you have concerning this response. Please address any questions in writing.

Sincerely,


HENRY S. RUTH, JR.
Special Prosecutor

MORNING

EVENING

SUNDAY

THE

SUN

THE A.S. ABELL COMPANY, PUBLISHER

BALTIMORE, MD. 21203

WASHINGTON BUREAU

1214 NATIONAL PRESS BUILDING

14TH AND F STREETS, N.W.

WASHINGTON, D.C. 20004

347-8250

March 3, 1975

Mr. [redacted]

Freedom of Information Act Officer
Office of the Watergate Special Prosecutor
1425 K Street, N.W.
Washington, D.C.

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Dear Mr. [redacted]:

This is a request under the Freedom of Information Act as amended (5 U.S.C. §552).

I am writing to request access to the following files for the purposes of inspection and, if I so choose, copying:

Your files relating to the investigation of the wiretapping of John Sears, which terminated on October 2, 1969, and which was conducted by the Federal Bureau of Investigation on the orders of John N. Mitchell, then attorney general.

Under the recent amendments to the act, the exemption for investigatory files is limited to investigations which are in progress. Since this investigation has been closed, I believe the exemption does not apply.

As you know, the amended Act provides that if some parts of a file are exempt from release that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested information are exempt, you provide me immediately with a copy of the remainder of the file. I, of course, reserve my right to appeal any such deletions.

If you determine that some or all of the requested information is exempt from release, I would appreciate your advising me as to which exemption(s) you believe covers the information which you are not releasing.

ENCLOSURE 139-4692-10

I am prepared to pay costs specified in your regulations for locating the requested files and reproducing them.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interest because furnishing the information can be considered as primarily benefitting the public." I believe that this request plainly fits that category and ask you to waive any fees.

If you have any questions regarding this request, please telephone me at the above number.

As provided for in the amended Act, I will expect to receive a reply within ten working days.

Sincerely yours,



Adam Clymer

AC:slk

FM:caz

Clarence M. Kelley
Director
Federal Bureau of Investigation

January 25, 1974

Henry S. Ruth
Deputy Special Prosecutor
Watergate Special Prosecution Force

National Security Wiretaps - John Sears, James McLane,
Marvin Kalb

In connection with our investigation of the national security special coverage wiretap project would the Bureau please provide this office with copies of the following documents:

Memoranda

✓ - Documents relating
to Sears

DATE	FROM	TO	SUBJECT
7/23/69	DeLoach	Tolson	Sears
7/23/69	Sullivan	DeLoach	Sears
7/23/69	Hoover	Mitchell	Sears (+file copy)
8/8/69	DeLoach	Tolson	Sears
9/10/69	DeLoach	Tolson	Kalb (+Gandy copy)
9/10/69	Hoover	Mitchell	Kalb (+file copy)
9/15/69	Sullivan	DeLoach	Sears and Kalb
9/16/69	DeLoach	Tolson	Sears
10/2/69	Hoover	Mitchell	Sears (+file copy)
11/4/69	Hoover	Mitchell	Kalb (+file copy)
12/14/70	Sullivan	Tolson	McLane
12/14/70	Hoover	Mitchell	McLane (+file copy)
12/16/70	Sullivan	Tolson	McLane
1/27/71	Sullivan	Tolson	McLane
1/27/71	Hoover	Mitchell	McLane

ENCLOSURE

139-4692-

Letters

Letters concerning the surveillance of John Sears were sent to John Ehrlichman at the White House and a copy of each of these letters was sent to Attorney General Mitchell along with a covering memo. For each letter copies of the following should be provided:

- (1) Original letter to Ehrlichman
- (2) File copy of letter to Ehrlichman
- (3) Original cover memo to Mitchell
- (4) File copy of the cover memo to Mitchell

Letters concerning the Kalb surveillance were sent to Dr. Kissinger and the President. Copies of the original and file copy of each of these letters should be provided.

Letters concerning the McLane surveillance were sent to H.R. Haldeman. Copies of the original and file copy of each of these letters should be provided.

In addition, copies of the following should be provided:

- (a) Original and file copy of two letters, one to Dr. Kissinger and the other to the President, concerning Henry Brandon and dated July 18, 1969
- (b) Original and file copy of a letter to H.R. Haldeman concerning Tony Lake dated December 11, 1970
- (c) An eight page letterhead memorandum captioned Marvin Kalb and dated November 24, 1967

It is possible that it may become necessary to introduce before the grand jury any or all of the documents requested above. In order to minimize the extent or consequences of even limited disclosure within the secrecy of the grand jury would the Bureau indicate what, if any, documents or portions thereof the Bureau would prefer to withhold from the grand jury for security reasons.

cc:

File

Ruth

File

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UNITED STATES GOVERNMENT

Memorandum

~~SECRET~~TO : Leon Jaworski
Special Prosecutor

FROM : Director, FBI

DATE: January 30, 1974

SUBJECT: NATIONAL SECURITY WIRETAPS -
JOHN SEARS, JAMES MC LANE, AND
MARVIN KALB

Reference is made to the memorandum of Henry S. Ruth, Deputy Special Prosecutor, dated January 25, 1974, captioned as above, requesting copies of correspondence relating to electronic surveillances of captioned individuals conducted at the request of the White House.

Enclosed herewith are copies of the requested documents. The eight-page letterhead memorandum concerning Marvin Kalb, dated November 24, 1967, and two copies of the memorandum C. D. Deloach to Mr. Tolson, dated September 10, 1969, with two enclosed copies of memoranda to the Attorney General of same date relating to Kalb, are not being included and will be forwarded by separate memorandum. Since this material is considered to be most sensitive, it has been maintained under the strictest control and sole possession of Inspector T. J. Smith of this Bureau.

Pursuant to the discussion held on January 29, 1974, in the Attorney General's Office among Attorney General William B. Saxbe, Deputy Associate Director E. S. Miller, Inspector T. J. Smith, and you, it is requested you maintain these documents under the strictest control. It is also requested that no copies of them be made unless, in your judgment, it is absolutely necessary. It is also requested that you return this material to the FBI at the earliest practical time.

Enclosures - 85

~~SECRET~~

Classified by T. J. Smith
Exempt from GDS, Category Number 2
Date of Declassification Indefinite



Assoc. Dir.

Dep. AD Adm.

Dep. AD Inv.

Asst. Dir.:

Admin.

Comp. Syst.

Ext. Affairs

Files & Com.

Gen. Inv.

Ident.

Inspection

Intell.

Microscopy

Legal Coun.

Plan. & Eval.

Spec. Inv.

Training

Telephone Rm.

Director Sec'y

Memorandum

TO : Clarence M. Kelley, Director
Federal Bureau of Investigation

DATE: March 14, 1975

FROM : Henry S. Ruth, Jr.
Special Prosecutor

SUBJECT: Freedom of Information Request Regarding the Sears Wiretap

John P. Sears

Enclosed is a copy of a letter to this Office from Mr. Adam Clymer requesting access under the Freedom of Information Act to this Office's files regarding our investigation of the FBI's electronic surveillance of John P. Sears. As you are aware, this Office has received from the Bureau a large number of documents relating to the Sears surveillance. In addition, at the request of this Office, the Bureau conducted certain interviews with regard to the Sears surveillance (See: Report of S. A. [redacted] 9/18/74, Bureau file 139-214, classified SECRET). By memorandum dated October 2, 1974, you were advised that, "The Special Prosecutor has decided that the available evidence is not sufficient for indictment and that no indictment will be sought."

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In responding to Mr. Clymer's request it is likely that we will take the position that any request for Bureau documents must be addressed directly to the Bureau. It would be helpful in making our response to have the Bureau's views concerning the extent of disclosure necessary under this Act. It appears that the following issues, among others, are raised by this request:

- (1) Whether in response to a FOIA request the Government is required to confirm that an individual, other than the requesting party, was the subject of direct electronic surveillance.
- (2) Whether, due to a tradition of strict confidentiality, any interview conducted by FBI agents is conducted under "circumstances from which such assurances (of confidentiality) could be reasonably inferred."

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ack. M. 4/29/75
Ruth 4/29/75
RE: [unclear]
ENCLOSURE

FOIA

51 JUN - 1975 F. B. I.

- (3) Whether, due to Bureau regulations forbidding disclosure by Bureau employees of any information learned during the course of their employment, any interview by this Office or Bureau agents of present or former Bureau employees can be considered to have been conducted under "circumstances from which such assurances (of confidentiality) could be reasonably inferred."
- (4) Whether this Office is at liberty to produce any document received from the Bureau or must all such requests be directed to the Bureau.
- (5) It is to be noted that a number of the documents this Office has received from the FBI are internal Bureau memoranda and although they contain classified information they do not bear any classification stamp. It is my understanding that over the years the Attorney General has permitted the Bureau to follow the practice of not classifying those communications prepared entirely for internal use. At issue is whether or not this Office can refuse to disclose these documents on the basis that they contain classified information although they do not bear any classification stamp.
- (6) Whether memoranda from this Office to the Bureau requesting documents and/or investigations are producible under this Act.
- (7) Whether memoranda from the Bureau to this Office transmitting documents and/or the results of investigations are producible under this Act.

Should you wish to comment on any additional issues raised by Mr. Clymer's request we would appreciate receiving your thoughts.

MORNING

EVENING

SUNDAY

THE

SUN

THE A.S. ABELL COMPANY, PUBLISHER

BALTIMORE, MD. 21203

WASHINGTON BUREAU
1214 NATIONAL PRESS BUILDING
14TH AND F STREETS, N.W.
WASHINGTON, D.C. 20004
347-8250

March 3, 1975

Mr. [redacted]

Freedom of Information Act Officer
Office of the Watergate Special Prosecutor
1425 K Street, N.W.
Washington, D.C.

b6
b7C

Dear Mr. [redacted]:

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As you know, the amended Act provides that if some parts of a file are exempt from release that "reasonably segregable" portions shall be provided. I therefore request that, if you determine that some portions of the requested information are exempt, you provide me immediately with a copy of the remainder of the file. I, of course, reserve my right to appeal any such deletions.

If you determine that some or all of the requested information is exempt from release, I would appreciate your advising me as to which exemption(s) you believe covers the information which you are not releasing.

ENCLOSURE

139-4692-11

I am prepared to pay costs specified in your regulations for locating the requested files and reproducing them.

As you know, the amended Act permits you to reduce or waive the fees if that "is in the public interest because furnishing the information can be considered as primarily benefitting the public." I believe that this request plainly fits that category and ask you to waive any fees.

If you have any questions regarding this request, please telephone me at the above number.

As provided for in the amended Act, I will expect to receive a reply within ten working days.

Sincerely yours,



Adam Clymer

AC:slk